Supreme Court, U.S.
FILED
FEB 15 2001
CLERK

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No. 00-1155

IN THE
Supreme Court of the United States

ROSEMARY C. BUTCHER, et al.,
Petitioners,

v.

JOBST W.F. BLACHY, et al.,
Respondents.

On Petition For Writ of Certiorari
to The United States Court of Appeals
For The Sixth Circuit

RESPONSE OPPOSING PETITION FOR WRIT OF CERTIORARI

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February 15, 2001

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EDITOR'S NOTE

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In re Gulf Oil/Cities Service Tender Offer Litigation, 142 F.R.D. 588, Fed. Sec. L. Reg. (CCH) ¶ 96,845 (S.O.N.Y. 1992) 1

The respondents (other than the United States) oppose the petition and ask that it be denied.

The arguments raised by Petitioner are almost entirely addressed by the Opinion of the Sixth Circuit Court of Appeals. Petitioner points out no important issue of federal law. The Court of Appeals concluded that Petitioner does not own the real property involved in this case, but holds it in constructive trust for the Respondents. That decision does not conflict with decisions of other Circuit Courts, nor with decisions of the Supreme Court[1]

Rosemary Butcher's petition reads as if this case were an exercise in property law, to determine where to award title among competing innocent claimants. In fact, Rosemary Butcher and her late husband exhibit none of "... the three somatic stigmata of good faith: the pure heart, the clean hand and the empty head." Mukasy, J., in *Re Gulf Oil/Cities Service Tender Offer Litigation*, 142 F.R.D. 588, 594, Fed. Sec. L. Rep. (CCH) ¶96,845 (S.D.N.Y. 1992). The petition glosses over the fact that the Butchers bamboozled innocent condominium purchasers. Petitioner offers no defense of those actions. Nevertheless, since 1991, she has sought to hang on to a claim to Respondents' properties.

FACTS

Alexander ("Mike") Butcher was the owner and president of LTDC, a development company. Rosemary, his wife, was LTDC's secretary. The Butchers deeded 36.65 acres of property to LTDC, recording the deed on July 12, 1978. On the same day, Alexander Butcher caused LTDC

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[1] Respondents have concurrently filed a conditional cross-petition concerning the Court of Appeals' conclusion that the lien of the IRS has priority over Respondents' ownership rights. One that issue, the decision is in conflict with other Circuits' decisions. Respondents were content to let the entire Court of Appeals decision stand. However, if this Court grants the Petition, Respondents request that it also grant the conditional cross-petition.

to re-deed 17.83 acres of the same property back to himself and Rosemary, but did not record it until July 14, 1978. LTDC later developed condominiums on the property deeded back, holding itself out as owner in state filings. LTDC sold the condominiums to Respondents and others. The Butchers did not cure the title problem, nor reveal it. Instead, they caused LTDC to convey the condominiums to innocent buyers, by warranty deeds, taking the buyers' money. The instances in which LTDC or the Butchers affirmed title in LTDC are set out in the Court of Appeals Opinion at Petitioner's Ap. 4a-5a and 11a-12a.[2] The Butchers asserted no title claim, allowing the condominium owners to move in and pay property taxes. Then, when Rosemary went bankrupt, she asserted a title interest in the parcel. No precept of law will shelter such behavior.

CASE HISTORY

Because Rosemary Butcher filed in bankruptcy and Alexander Butcher did not, unsorting the tangle they created has been laborious. The Court of Appeals observed that only a diabolical bar examiner would pose a tale so twisted. Petitioner's App. 2a. Rosemary Butcher seeks only to compound this one.

This case was filed in state court against Alexander Butcher, before he died. It was removed by the United States to the District Court for the Western District of Michigan. The District Court entered summary judgment for Respondents, concluding that the Butchers had no rightful interest in the condominiums. The constructive trust reached to Alexander's successor in interest, Rosemary Butcher, petitioner here. The relief was restricted to Alexander's interest because Rosemary

[2] The Opinion of the Sixth Circuit Court of Appeals is reported at 22 F.3d 896 (6th Cir. 2000.) The Opinion of the District Court is reported at 35 F. Supp.2d 554 (W.D. Mich. 1999).

Butcher, his wife, had filed for bankruptcy, while he had not.

ARGUMENT

Rosemary Butcher makes an elaborate argument about Michigan entireties titles, contending that the "title" of both Butchers somehow was insulated from courts of equity by her bankruptcy. Her apparent hope is to preserve some claim which no court can terminate. As the Court of Appeals held, Alexander's claimed interest in the property did not become part of Rosemary's bankruptcy estate.

The Court of Appeals dealt with this issue carefully and correctly. *See,* Opinion, at Petitioner's App. 17a-23a. When Rosemary Butcher filed in bankruptcy, Alexander was alive. He did not file for bankruptcy and no law prevented this suit against him. While this suit was pending, but after Rosemary filed her bankruptcy petition, Alexander quitclaimed his interest to her. Alexander's interest thus did not become part of Rosemary's bankruptcy estate. The action in the District Court was instituted against Alexander and continued against Rosemary as his successor in interest. Throughout, they were represented by Robert Butcher, as Rosemary is here.

The crux of Mrs. Butcher's entireties title argument is at page 12 of her petition. There, she argues that the Court of Appeals "should have imposed a constructive trust over Alexander's interest, which could be enforced only if Alexander survived Rosemary." She likens the constructive trust to a lien, citing *In re Arango,* 992 F.2d 611 (6th Cir. 1993). *Arango* did involve a judgment lien enforceable only against one spouse, and the effect of the other spouse's bankruptcy.

This argument is mistaken. Alexander and Rosemary Butcher both participated in the acts that gave rise to the constructive trust. *See,* Court of Appeals Opinion,

Petitioner's App. 22a, and District Court Opinion, Petitioner's App. 73a-74a. The constructive trust is not a lien, but a judicial declaration that the Butchers never had a right to assert title against the condominium owners. Any "title" in the Butchers' names was in trust for the rightful owners, from the day they were wronged. Because the Butchers' acts were wrongful, they had no valid interest in the properties. The condominium owners did not hold a "lien" on the Butchers' title. They owned the property — bought and paid for. The Butchers had no lawful interest on which to impose a "lien". They owned nothing.

The Butchers' fraudulent title was wrongfully withheld from the condominium owners from the day LTDC, the Butcher company, conveyed to them. *See,* Court of Appeals discussion, Petitioner's App. 25a-26a. Alexander's death did not end the court's power to right the wrong, to rule that a constructive trust existed, whether his "interest" remained in his hands or the hands of his successor. Rosemary Butcher was no innocent purchaser for value from Alexander, but a participant in his wrongdoing.

Under Michigan law, one who takes by quitclaim deed "acquires the right and title which his grantor had and no other." *Doelle v. Read,* 329 Mich. 655, 657, 46 N.W.2d 422, 423 (1951). This point was key to the Court of Appeals' ruling, which rejected Petitioner's elaborate theory that she preserved some kind of title to Respondent's condominiums. Opinion, Petitioner's App. 21a-22a.

Rosemary's petition argues deprivation of due process. She makes much of the District Court's order that she be served and ordered to show cause why the constructive trust should not be imposed, after the District Court had reached a decision. That order came in response to a last minute objection she raised after defending the case to conclusion.

Fed. R. Civ. P. 25(c) provides that, when an interest is transferred during suit, as it was here, the action may be continued against the original party, as the Court of

Appeals noted, Petitioner's App. 28a. Rosemary's argument about lack of service were raised late in the day, by motion for reconsidertion, and was a mere ploy. The District Court dealt with it appropriately, and within its broad power to add or substitute parties at any time. Fed. R. Civ. P. 17(a). Rosemary had her day in court.

Petitioner makes a final argument that the Court of Appeals made a fundamental error of fact, concerning issuance of a title commitment on July 18, 1978. Petition, at p. 29. Petitioner seems to argue that Lawyers Title Company could have figured out that the Butchers had taken a deed to the 17.83 acres and, therefore, the courts should let her keep it. That is nonsense.

The Court of Appeals addressed the same sort of argument and rejected it out of hand, applying established Michigan precedents. See, Opinion, Petitioner's App. p. 12a. ("The Butchers' misleading and deceptive conduct, however, will not be rewarded or justified simply because Lawyers Title failed to catch it." *Ibid.*)

To put this point to rest, we attach a list of recordings and commitments. App. 1a. This list was prepared by Petitioner and attached to her motion for summary judgment in the District Court. It became Joint Appendix page 240 in the Court of Appeals. It sets out the Butchers' recordation of the deed to LTDC on July 12, 1978, and the deed back to them the same day. That deed was not recorded until July 14, 1978. See, entries 2 and 7. Then came entry 8, in which Lawyers Title issued a sample commitment, used in the condominium filing package with Michigan regulators, issued in August, but as of July 13, 1978.[3]

July 13, 1978 was the day after the LTDC re-deed to the Butchers and the day before the re-deed was recorded. The reason the title commitment was made as of that day was because Alexander ("Mike") Butcher

[3] Petition accuses Respondents of lying about the existence of such a title commitment "dated July 18, 1978." This sample commitment was issued August 18, 1978. This one month error changes nothing.

requested it. Jt. App. 506, letter from Butcher to Arden Bawkey, of Lawyers Title. App. 2a. Butcher referred to the "state of the title up until July 13, 1978," not revealing that he had executed the LTDC re-deed to himself and his wife on July 12.

Petitioner offers no reason why Alexander Butcher redeeded the property to himself and to her, no explanation why they should have any right in the property, no excuse for their chicanery. The Court of Appeals was not misled. The connivance of the Butchers created the confusion which they later tried to use to their own benefit.

Because Rosemary Butcher filed in bankruptcy, the unsorting of this tangle has been difficult. But, it was not improper for the District Court to entertain a state law claim and impose a state law remedy to sort out Alexander's end of the title questions.

The decisions of the District Court and the Court of Appeals, declaring that the Butchers never had a right to the properties, were correct. The petition should be denied.

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February 15, 2001

FROM THE DESK OF

ALEXANDER M. BUTCHER

8/17/78

EMXKK
68 copies = H

Arden:

Please furnish items 3 and 4 noted in the attached letter to Bill Myers of August 16th, as soon as possible. The date of the specimen form of title insurance commitment should be July 13, 1978, the date of the closing with First National Bank and Trust of Petoskey. The sample commitment should show the property in the name of Little Traverse Development Co. (i.e., the property included in the Harbor Cove Phase II condominium legal description only). Subject only to the City National Bank of Detroit construction loan since that was in fact the state of the title up until July 13, 1978.

You will also have to furnish copies of the documents which are of record and will be noted in your sample commitment such as the easements, etc., which may appear of record.

If you have any questions, please call me. I will need these documents by Monday afternoon at the end of the day August 21st and I will pick them up if you will call our office.

Thank your,

Mike Butcher

DEPOSITION EXHIBIT
P-69 Barker 9-11-92

506

EXHIBIT 126 166

1978 PROPERTY TRANSACTIONS

Recording Data	
1 7/12/78; 9:35 a.m.	**6/30/78** - Warranty Deed of **36.65 acres** to Butchers recorded. Consideration $640,000. State revenue taxes paid. (Complaint Exhibit 5) L286, P387 - 89, inclusive (Parcels 1, 2 & 6)
2. 7/12/78; 9:40 a..m.	**7/6/78** - Warranty Deed of **36.65 acres** from Butchers to LTDC recorded. Consideration $1.00 (Complaint Exhibit 6) L286, P390.
3.	**7/7/78** - Revised metes and bounds descriptions, dividing entire property into 6 parcels - Exhibit 15.
4. 7/12/78; 10:00 a.m.	**7/11/78** - $1,180,000 mortgage to City National Bank on **8.68 acres** out of the **36.65** acres recorded L286, P399. (Parcel 2).
5.	**7/11/78; 10:10 a.m.** - Lawyers Title issued commitment to insure $1,380,000 Mortgage from LTDC to City National Bank of Detroit recorded (Motion Exhibit 5) L286, P411. 9.69 acres out of the 36.65 acres. (Parcel 1)
6. 7/12/78; 10:05 a.m.	$1,380,000 mortgage dated **7/11/78** to City National Bank on **9.69** acres. L286, page 411. (Parcel 1)
7. 7/14/78; 9:45 a.m.	**7/12/78** - Warranty Deed from LTDC to Butchers of 17.83 acres (Complaint Exhibit 7), out of the **36.65 acres** recorded. L286, P527. (Parcel 6) $1.00 consideration.
8.	**August of 1978, <u>As of</u> 7/13/78; 8:00 a.m.** - Lawyers Title issued sample commitment (Exhibit 21) showing LTDC as owner of the 36.65 acres.
9. 7/18/78;; 11:40 a.m.	**7/13/78** - The Butchers borrowed $125,000 from National Bank and mortgaged the subject 17.83 acres - parcel 6. See Exhibit 18. L286, page 871.
10. 7/25/78; 11:40 a.m.	**7/24/78** - Butchers mortgage additional 58 acres to guarantee the $125,000 loan to City National Bank, L286, pp 871-3 (Exhibit 17).
11.	**8/18/78; 12:25 p.m., - <u>As of</u> 7/13/78** - Lawyers Title insured interests of First National Bank, and/or their assigns for loan to Butchers dated July 13, 1978. (Parcel 6) LTDC designed as owner - Parcel 1 on title policy. (Exhibit 19).
12. 11/14/78	**11/1/78** - Master Deed for Phase II recorded by LTDC (Complaint Exhibit 8) which included the entire **36.65 acres** L290, PP272-320, inclusive.

EXHIBIT 4